

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**PAKSN, INC., as a Joint and/or Single
Employer with DIYAVILLA, INC. d/b/a
DIYAMONTE POST ACUTE CARE CENTER**

and

Case 20-CA-139801

SEIU-UHW WEST

DECISION AND ORDER

Statement of the Case

On March 4, 2015, Paksn, Inc., as a joint and/or single employer with Diyavilla, Inc. d/b/a Diyamonte Post Acute Care Center (the Respondent), SEIU-UHW West (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

At all material times, Paksn, Inc. (Paksn), a corporation with its principal office and place of business located in Vacaville, California, has been engaged in the business of providing services to and operating nursing care facilities, including Diyavilla, Inc. d/b/a Diyamonte Post Acute Care Center.

During the 12-month period ending December 31, 2014, Paksn, in conducting its business operations described above, received gross revenue in excess of \$100,000.

During the same period, Paksn received goods valued in excess of \$5000 from points directly outside the State of California.

Based on the facts set forth above, Paksn is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and has been a healthcare institution within the meaning of Section 2(14) of the Act.

At all material times, Diyavilla, Inc. (Diyavilla), a California corporation, has been engaged in the operation of a skilled nursing home facility called Diyamonte Post Acute Care Center, located in Millbrae, California.

During the 12-month period ending December 31, 2014, Diyavilla, in conducting its business operations described above, received gross revenue in excess of \$100,000.

During the same period, Diyavilla purchased and received goods and supplies, at its Millbrae, California facility, valued in excess of \$5000 directly from outside the State of California.

Based on the facts set forth above, Diyavilla is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a healthcare institution within the meaning of Section 2(14) of the Act.

At all material times, Paksn and Diyavilla have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and/or administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have interrelated operations with common insurance and support services. Based on the above operations, Paksn and Diyavilla constituted a single integrated business enterprise and a single employer within the meaning of the Act.

In the alternative, at all material times, Paksn has possessed and exercised direct control over the labor relations policy of Diyavilla, and determined or co-determined with Diyavilla, essential terms and conditions for employees at Diyavilla. Based on these operations, Paksn and Diyavilla have been joint employers of the employees of Diyavilla.

On about February 12, 2014, the Respondent purchased the business of A&C Healthcare Services, Inc. (A&C) in a bankruptcy proceeding and with full knowledge and acceptance of a Board decision and court judgment against A&C as the successor employer to Pleasant Care. See *A&C Healthcare Services, Inc.*, 356 NLRB No. 100 (2011), enf. 518 Fed.Appx. 533 (9th Cir. 2013). Since the purchase of A&C, the

Respondent has continued to operate the business of A&C in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of A&C. Based on these operations, the Respondent has continued the employing entity and is a successor to A&C.

2. The labor organization involved

SEIU-UHW West (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respondent, Paksn, Inc. as joint and/or single employer with Diyavilla, Inc. d/b/a Diyamonte Post Acute Care Center (Respondent), Millbrae, California, its officers, agents, successors, and assigns shall

A. Cease and desist from

(1) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit, which includes all employees employed in classifications covered by the collective-bargaining agreement effective October 1, 2006, through June 15, 2008, between the Union and Pleasant Care at 33 Mateo Avenue, Millbrae, California; excluding all other employees, guards and supervisors as defined by the Act (the Unit).

(2) Delaying in providing the Union with information it requests that is relevant and necessary to its role as the exclusive collective-bargaining representative of employees in the Unit.

(3) In any like or related manner interfering with, restraining or coercing employees in the exercise of their Section 7 rights.

B. Take the following affirmative action necessary to effectuate the policies of the Act.

(1) Upon request, bargain collectively with the Union as the exclusive representative of unit employees with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody such agreement in a signed document.

(2) Within 14 days of service by the Region, post in prominent places around the Respondent's facilities at 33 Mateo Avenue, Millbrae, California, copies of the attached Notice marked Appendix A. Copies of the notice, on forms provided by Region 20, after being signed by the Respondent's authorized representative, shall be posted for a

period of 60 days, in conspicuous places, including all places where it normally posts notices to employees. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or by other electronic means, if the Respondent customarily communicates with its employees by such means. Responsible steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(3) Within 21 days of the issuance of the Board's Order, file with the Regional Director for Region 20 of the Board, a sworn affidavit from a responsible official describing with specificity the manner in which the Respondent has complied with the terms of the Board's Order, including the locations of the posted documents.

Dated, Washington, D.C., July 20, 2015

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF AN APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to bargain in good faith with SEIU-UHW West (the Union) as the exclusive representative of our employees in the following unit:

All employees in classifications covered by the collective-bargaining agreement effective October 1, 2006, through June 15, 2008, between the Union and Pleasant Care at 33 Mateo Avenue, Millbrae, California; excluding guards and supervisors as defined by the Act.

WE WILL NOT delay in providing the Union with requested information that is relevant and necessary to perform its duty as the collective-bargaining representative of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

WE WILL bargain collectively with the Union as the exclusive representative of the employees in the unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody such agreement in a signed document.

**PAKSN, INC., as Joint and/or Single Employer
with DIYAVILLA, INC. d/b/a
DIYAMONTE POST ACUTE CARE CENTER**

The Board's decision can be found at www.nlrb.gov/case/20-CA-139801 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

